



**VIA ELECTRONIC SUBMISSION**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
hq.foia@epa.gov

May 31, 2017

Re: Freedom of Information Act (FOIA) Request Letter to EPA

Dear Sir or Madam:

On behalf of the National Pork Producers Council (“NPPC”), I hereby make the following request under the Freedom of Information Act, 5 U.S.C. § 552 *et seq* (FOIA), and under 43 C.F.R. § 2.11 et seq.

“Communications,” as used herein means every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer, or exchange of information, whether by (without limitation) telephone, telefax, facsimile, mail, personal delivery, electronic mail, text message, or otherwise, including any notes made regarding the communication or any drafts prepared in anticipation of any such communication.

“Documents,” as used herein, means communications, correspondence, memoranda, instruction memoranda, minutes of meetings, personal notes, personal statements, electronic mail, letters, notes, social media posts, text messages, notices, facsimiles, recordings, log books, diaries, calendars, photographs, reports, forms, maps, charts, tables, presentations, orders, plans, public comments, files, filings, data, and the like.

This request seeks responsive documents in the custody of any EPA office, including, but not limited to, EPA Headquarters. This request also specifically seeks responsive documents in or on the personal computers, cellphones or other devices, or personal email accounts used by EPA staff if used for any government purpose.

I hereby request one copy of any document held by EPA relating to the following subjects:

1. All communications relating to EPA File Nos. 11R-14-R4 and 37R-16-R4 between the EPA and:
  - a. Lisa Blue Baron;
  - b. Lynn Bradshaw;
  - c. Mark Doby;

***The Global Voice of the U.S. Pork Industry***

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- d. Elizabeth Haddix;
  - e. John Hughes;
  - f. Michael Kaeske;
  - g. Marianne Engelman Lado;
  - h. Eric Manchin;
  - i. Jonathan J. Smith;
  - j. Daniel Wallace;
  - k. Mona Lisa Wallace;
  - l. Baron and Blue Law Firm;
  - m. Earthjustice;
  - n. Kaeske Law Firm;
  - o. Natural Resources Defense Council;
  - p. Rural Empowerment Association for Community Help;
  - q. Southern Environmental Law Center;
  - r. University of North Carolina's Center for Civil Rights;
  - s. Wallace & Graham, P.A.;
  - t. Waterkeeper Alliance; and
  - u. Yale Law School.
2. All communications between the EPA and the North Carolina Department of Environmental Quality ("NCDEQ") relating to EPA File Nos. 11R-14-R4 and 37R-16-R4.
  3. All documents relating or referring to the preparation of the Letter of Concern from Lillian S. Dorka, Director, External Civil Rights Compliance Office, Office of General Counsel, to William J. Ross, Jr., *et al.*, dated January 12, 2017 (attached hereto as Exhibit 1) ("Letter of Concern").
  4. All documents referenced in or supporting the assertions made in the Letter of Concern.
  5. All communications between the EPA and "applicable facility(ies)" (as outlined in EPA Guidance document "Role of Complainants and Recipients in the Title VI Complaints and Resolution Process," dated May 4, 2015, available at [https://www.epa.gov/sites/production/files/2017-02/documents/roles-of-complainants-and-recipients-issue\\_final.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/roles-of-complainants-and-recipients-issue_final.pdf)) ("May 2015 EPA Guidance") with respect to EPA File Nos. 11R-14-R4 and 37R-16-R4.
  6. All communications between the EPA and "businesses/industry" and "permit holders" (as outlined in the May 2015 EPA Guidance) with respect to EPA File Nos. 11R-14-R4 and 37R-16-R4.

Under applicable law pertaining to the Freedom of Information Act, we believe that these documents and items are available to us and other members of the public. As the above referenced May 2015 EPA Guidance makes clear, "[t]he EPA is not in an adjudicatory role [in a Title VI matter], evaluating evidence produced by opposing sides, but instead investigates allegations about its recipient, and reaches a conclusion regarding whether a violation of Title VI has occurred." *See also* 65 Fed. Reg. 39672 ("the Title VI

administrative process is not an adversarial one between the complainant and recipient[.]”). Accordingly, we believe these documents are not subject to any FOIA exemption.

If any portion of this request is denied, we request a detailed statement of the reasons for the withholding and an index or similar statement of the nature of the documents withheld pursuant to the Freedom of Information Act. As required by the Freedom of Information Act, 5 U.S.C. § 552 (a)(6)(A), we shall expect a reply within twenty (20) business days.

FOIA provides that if portions of a document are exempt from release, the remainder of the document must be segregated and disclosed. Therefore, please send to me all non-exempt portions of the documents that I have requested, and I ask that you justify any deletions by reference to specific exemptions allowed under FOIA. I reserve the right to appeal your decision to withhold any materials and will likely do so.

FOIA provides for a waiver or reduction of fees if disclosure could be considered “primarily benefiting the general public.” 5 U.S.C. § 552(a)(4)(A). This request is made on behalf of the National Pork Producers Council, a 501(c)(5) non-profit group committed to the betterment of pork producers in the United States. The National Pork Producers Council conducts public-policy outreach on behalf of its 43 affiliated state associations, enhancing opportunities for the success of U.S. pork producers and other industry stakeholders by establishing the U.S. pork industry as a consistent and responsible supplier of high-quality pork to the domestic and world markets. The NPPC accomplishes this goal through public education, scientific analysis, and advocacy. The NPPC’s members make a significant contribution to the nation’s food supply. Because production of these documents will benefit the general public, We ask that you waive all search and duplication fees, pursuant to § 552(a)(4)(A) and 43 C.F.R. § 2.21.

A FOIA request was submitted by NPPC to USDA/AMS. *See* FOIA No. 2012-AMS-02675-F and Appeal No. 2012-AMS-00144A. A fee waiver was granted in that request. The nature of this request contained herein is based upon the same reasoning which allowed USDA/AMS to grant a fee waiver previously. Thus, a fee waiver should apply to this request. A copy of the decision of USDA/AMS to permit a fee waiver for NPPC is attached as Exhibit 2.

To reiterate, a waiver of fees is warranted because these documents “are likely to contribute significantly to public understanding of the operations or activities of the government” as required by 43 C.F.R. § 2.21(a)(i). Additionally, a waiver of fees is warranted because the requested documents are not sought “primarily in the commercial interest of the requestor” as required by 43 C.F.R. § 2.21(a)(ii). Rather, these documents are sought by a non-profit trade association in connection with its efforts to protect the public’s interest in having pork as a viable option on the proverbial dinner table. In FOIA, Congress explicitly recognized the need for non-profit organizations to have free access to governmental documents. See Better Government Ass’n v. Dept. of State,

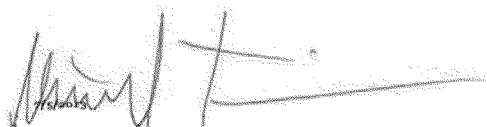
780 F.2d 86 (D.C. Cir. 1986). Government agencies cannot impair this free access by charging duplication or search fees for FOIA information requests. Id. at 1270.

Thank you for your cooperation in this matter.

Requestor Information: Michael Formica, Esq.  
Assistant Vice President and Counsel  
National Pork Producers Council  
122 C Street NW, Suite 875  
Washington, DC 20001  
Email: formicam@nppc.org

Please do not hesitate to contact me if any questions arise in connection with this request.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael Formica', followed by a long horizontal line extending to the right.

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